IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 397 of 2000.

Judgment reserved on 21.6.2007.

Date of Decision: 29.6. 2006.

Sanatan Dharam Sabha Kullu and another **…..Petitioner.**

versus

Shri Jagan Nath Sharma **……Respondent.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Ajay Kumart, Advocate.

For the Respondents: Mr. Ashok Sharma, Advocate

Dev Darshan Sud, Judge .

This Revision petition has been filed by the plaintiff against the order of the learned Trial Court rejecting the application filed by the plaintiff under Order 7 Rule 18 of the Code of Civil Procedure with the prayer that the additional documents be allowed to be produced and proved on the record in accordance with law. While dismissing the application, the Trial Court noted that the documents sought to be placed on the record were not filed with the application nor were they relied upon by the plaintiff nor any cogent reason was assigned for not producing the documents with the plaint. While concluding, the Trial Court observed that having regard to the entire facts and circumstances of

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

the case and the fact that no documents sought to be proved in evidence tendered are accompanied with the application, it was held that no permission could be accorded.

The findings of the Trial Court that the documents sought to be proved on the record were not filed with the application, is not correct. The finding is perverse and not supported by the material on the record. The application was filed by the plaintiff on 15.7.1997. On the same date, the documents were filed along with the application accompanied by a list of documents filed. The order of the Trial Court shows a total non-application of mind. Both the applications and the list of documents filed bear the same date and the signatures of the Senior Sub Judge, Kullu. The judgment cannot be supported from the material on the record. The learned counsel for the respondent has resisted the revision on a number of grounds including the fact that the documents were filed at a later stage and cannot be allowed to be proved in evidence.

Order 7 Rule 18 of the Code of Civil Procedure is not a provision whereby mere filing of documents constitutes substantive evidence of their contents. Such documents have to be proved in accordance with law, the defendant would get a chance of cross-examination and lead evidence in rebuttal. It is not as if the right of the defendant would be closed.

Apart from the fact that the Court has mis-directed itself on the question involved by not even adverting to the facts, it is well settled law that the rules of procedure are not made with the purpose of hindering justice.

In **Saroda Prasad Pakrasi and others Vs. Umasankar Sanyal and others AIR 1927 Cal 168** it was held:-

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"…..I would only impress upon the trial Court the fact, as observed by the Judicial Committee in the case of ***Indrajit Pratap Sahi v. Amar Singh (6)*** that:

"Rules of procedure are not made for the purpose of hindering justice.

Wide discretion has been given to the Court with regard to the matters of reception of evidence although the documents have not been entered in the list of documents filed by the parties, and this discretion should be exercised for the furtherance of justice……."

In **Kailash vs. Nanhku and others 2005 (4) SCC 480,** the Hon'ble Supreme Court held:-

"All the rules of procedure are the handmaid of justice. The language employed by the draftsman of Processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by ***Krishna Iyer, J. in Sushil Kumar Seen v. State of Bihar*** are pertinent: (SCC p777, paras 5-6)

"The mortality of justice at the hands of law troubles a judge's conscience and points an angry interrogation at the law reformer.

The Processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of

vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. … Justice is the goal of jurisprudence-Processual, as much as substantive."

In ***State of Punjab v. Shamlal Murari*** the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCCp720)

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

In ***Ghanshyam Dass v. Dominion of India*** the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle." (para 28 and 29)

Dealing with the principles applicable for allowing documents to be produced at a later stage in **Budhe Ram vs. Hira and others, AIR 1953 HP 52** it has been held that:-

"It was strenuously argued by the learned counsel for the defendant-appellant that no mention of the partition-deed was made in the plaint, and that the plaintiffs did not file along with the plaint a list mentioning the partition-deed as a document, whether in their possession or power or not, on which they relied as evidence in support of their claim, as required by O 7, R. 14, Civil P.C. There can be no doubt about these omissions on the part of the plaintiffs, but the mere fact that compliance with the provisions of O 7, R 14 was not made did not totally debar the production of the document or its secondary evidence. The Court had the power to allow the production of such a document or secondary evidence relating thereto under R. 18 of the said Order despite the omission" (para -4)

To the similar effect is another judgment of this Court in **Balwant Kumar and another vs. Kailash Behl and another AIR 2003 HP 48.**

> "…….The trial Court is also not right in observing that since it was not given in the list of witnesses and relied upon at the time of filing the plaint as envisaged under Order 7, Rule 14 CPC, it cannot be permitted to be produced at a later stage for the same reason that the plaintiffs intend to produce it to rebut the stand of adverse possession taken by the defendants and it is permissible as provided under sub –rule (2) of Rule 18 of Order 7 C.P.C." (para 7)

In **Shib Kumar Banerjee vs. Rasul Bux AIR 1959 Cal 302** dealing with the provisions of Order 7 Rule 18 of the Code of Civil Procedure the High Court of Calcutta held :-

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> "……From the mere fact that the documents were not originally disclosed, but disclosed at a very late stage during the trial, I will not be justified in holding that the documents have been manufactured……"(para-4)

The application discloses that the documents sought to be produced are in the nature of court judgment, revenue records and resolutions of the Sabha. There can be no justification in presuming that the judgments and the revenue records can be manufactured or that the resolutions of the Sabha which comprised of a large number of members would be fabricated. In any event when the document comes on the record it would be open to the defendants to cross-examine the witnesses in order to enable the court to come to a just conclusion. Mere allowing of

the application would not per se amount to proof of the contents of the documents or the facts stated therein.

Learned counsel for the respondent submits that provisions of Order 7 Rule 18 have now been abolished and this revision deserves to be dismissed. This argument deserves to be rejected on the ground that the amendment made in the Civil Procedure Code is not retrospective otherwise also, Order 7 Rule 14 (3) of the amended Code vests discretion in a Court to allow the reception of a documents at a later stage. The judgment of the Trial Court does not disclose exercise of discretion leave alone sound discretion. As I have held that factual foundation of the contents of the judgment are not borne out from the record.

Learned counsel for the respondent has placed reliance on **State of H.P. vs. Girja Kumar and others 2000(2) SLC 253** in support of his contention wherein it has been held that the law inforce on the date of filing the suit would govern the cause and not the law on the date inforce at the time when the cause of action accrued. The law on the date when the suit was filed was clear. He also placed his reliance in **Mt. Kamlabai and other vs. Sheo Shankar Dayal and another**, **AIR 1958 SC 915** in support of his contentions that no person has vested right in any course or procedure. There can be no dispute of the proposition of law laid down in these judgments. I have held that the law is not retrospective and even after amendment filing of additional documents is subject matter or Order 7 Rule 14 sub Rule (3) which is not different from and in pari material with Order 7 Rule 18 of the Code of Civil Procedure. Both the rules are reproduced for ready reference:-

"**Order 7 Rule 14** …….**(3)** A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit."	**Rule 18. Inadmissibility of document not produced when plaint filed.--- (1)** A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. **(2)** Nothing in this rule applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant or handed to a witness merely to refresh his memory".

The submission of learned counsel for the respondents are rejected as in sum and substance both before and after the amendment of the Code of Civil Procedure, there is difference in the two provisions as extracted above.

In these circumstances, revision petition is accepted. The judgment of the Trial Court is quashed and set aside. The documents filed with the application are directed to be taken on the record of the case and the matter will proceed further in accordance with law. Parties are

directed to appear before the Trial Court on 24th August, 2007. Records of the case be sent back immediately. There shall be no order as to costs.

29th June, 2007. **(Dev Darshan Sud),**
(cm) **Judge.**